

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

WARREN SCOTT HAGAR,

Plaintiff,

V.

DOUG RADER, IN HIS OFFICIAL
AND INDIVIDUAL CAPACITY,
STONE COUNTY, MISSOURI,
BRAD COLE,
IN HIS OFFICIAL AND INDIVIDUAL
CAPACITY, AND
CHRISTIAN COUNTY, MISSOURI,

Defendants.

Case No.: 3:17-cv-05022-SRB

**PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S
VOLUNTARY DISMISSAL**

COMES NOW Plaintiff, by and through counsel, Corbett Law Firm, P.C., and for his response states as follows:

SUGGESTIONS IN OPPOSITION

Though Plaintiff has filed a voluntary dismissal after an answer that has been filed by Defendant and while a 12(b)(6) motion to dismiss is pending, Plaintiff cannot agree that the dismissal against Defendant Christian County should be anything other than a dismissal without prejudice. In the Eighth Circuit generally, dismissals without prejudice following a 12(b) (6) motion are favored over dismissals with prejudice. *Rickmeyer v. Browne*, 995 F. Supp. 959, 1019 (D. Minn. 2014) *citing Michaels v. Neb State Bar Assn*, 717 F-2d, 437, 438-439 (9th Cir. 1983)

Typically, a court rightfully dismisses a case with prejudice only when there are multiple pleading failures. *Id.*

In this case, Plaintiff filed a lawsuit against Brad Cole and Christian County. This is Plaintiff's first Complaint against Christian County arising out of the facts that originally gave to a lawsuit against Doug Radar and Stone County only.

Defendant is correct in its assertion that there has been discovery conducted in the case, but that discovery has nothing to do with Defendant's Motion to Dismiss and Defendant can cite to

no benefit from the discovery as it's basis for the motion. Further, the discovery completed in this case has been primarily about the conduct of Rader, Cole and Hagar. Christina County has no attorneys of record that represent it separately. There has yet to be depositions of the Defendants, Cole and Rader but they are being scheduled.

Defendant is not prejudiced by the Court entering a dismissal without prejudice. Plaintiff does not anticipate any claim being refiled against Christian County, but at this stage without discovery being completed, a dismissal without prejudice is premature.

CORBETT LAW FIRM, P.C.

/s/ Brandon C. Potter

BRANDON C. POTTER #52232
2015 East Phelps Street
Springfield, MO 65802
Ph. (417) 866-6665 Fax (417) 866-6699
bpotter@corbettlawfirm.com
Attorneys for Plaintiff